



July 10, 2002

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2002-3736

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165388.

The City of Conroe (the “city”) received a request for information regarding the identity or location of a named individual. In addition, the requestor asks that the department “verify” the information available to the requestor and “complete the blanks” on a form submitted by the requestor. You claim that the information you have submitted as Exhibit B is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that in addition to his request for information, the requestor asks the department to fill in the blanks on a form the requestor submitted to the city. The Public Information Act (the “Act”) does not require the governmental body to prepare new information in response to a request. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex.App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). Nor does the Act require a governmental body to prepare answers to questions or do legal research. *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions). Although the Act does not require a governmental body to answer factual questions, a governmental body must make a good faith

effort to relate a request to information which it holds. Open Records Decision No. 561 (1990). Thus, we conclude that the city need not complete the form submitted by the requestor. As for the information you've submitted as responsive to the request, we will consider your claims.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information concerning a particular individual, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). In this instance, the request is for unspecified records relating to a named individual. This request for information implicates this individual's privacy interest. Therefore, to the extent that the city maintains law enforcement records that list this individual as a criminal suspect, arrestee, or defendant, the city must withhold all such information under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

You claim that social security numbers contained in the submitted information are excepted from disclosure under section 552.101. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state *pursuant to any provision of law* enacted on or after October 1, 1990. See *id.* You claim that the social security numbers in the submitted information fall under the federal Social Security Act because they were obtained pursuant to section 411.086 of the Government Code. Section 411.086 was effective September 1, 1993. The provision contemplates rules that the Department of Public Safety ("DPS") shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules "may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number. . . .".

You state that the social security numbers contained in the information at issue are "obtained and maintained, in part, to obtain criminal history information from the Department of Public Safety." However, you do not specifically state whether DPS actually requires or required

the department to submit the social security numbers at issue in order to request criminal history information. We find that, if the city obtained or maintains the social security numbers at issue in order to request criminal history information from DPS, *and* if DPS actually requires or required the city to submit the social security number with its request for criminal history information, then such social security numbers are confidential under section 552.101 of the Government Code in conjunction with federal law.

On the other hand, to the extent the social security information was obtained or is maintained by the city solely under a policy or practice to identify individuals, we advise that such a policy or practice does not constitute a law enacted on or after October 1, 1990 authorizing the city to obtain or maintain a social security number. In that case, we have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the city should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we address your argument under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license information we have marked under section 552.130.

In summary, to the extent that the city maintains law enforcement records that list the named individual as a criminal suspect, arrestee, or defendant, the city must withhold all such information under section 552.101 of the Government. The driver's license information we have marked must be withheld under section 552.130. Social security numbers in the submitted information may be confidential under section 552.101 in conjunction with federal law. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325.

Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID#165388

Enc. Submitted documents

c: Mr. Gerald Harden
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(w/o enclosures)